

US.Pat.Apl.Nr 10/759,164

Docket: 433-11US

Remarks
submitted January 2006

[001] This is in response to the Final Office Action dated 25 November 2005

[002] Amendments

Please enter the amended claims as submitted herewith.

In claim 1, the amendments are mainly focussed on changing "tray" to "tray-chamber", in order to clearly distinguish amended claim 1 inventively from Giordano and the rest of the prior art.

New clauses [11] and [13] have been added into claim 1, to further distinguish the invention from the prior art. These clauses emphasise that the tray-chamber is defined by, and is a part of, the support framework. Clearly, this feature is supported by the drawings and disclosure.

In the case of a cage that includes a tray in the form of a pull-out drawer, such as Giordano, that cage is now distinguished from claim 1.

The rest of the amendments follow consequently, or have been made in accordance with the points raised by the examiner, plus:-

- We have removed the limitation from claim 1 that the uprights and cross-members were made of metal.
We feel this limitation had no effect on the patentability of claim 1.
- New claims 20,21 bring out features of the biasing action that are clearly disclosed in the specification.
- The amendments to claim 17 correct my mistake as to the direction in which the spring biases the door, and clarify a possible ambiguity.
- Note: I gave claim 4 an incorrect status in the previous response, which is now corrected.

[003] Re: Final Action Status

We note that the 35 USC 112 rejection of claim 5 has been introduced for the first time in this present Action. The '112 rejection of claim 5 clearly was not necessitated by applicant's amendments.

Therefore, this present Action should not have been given **Final** status.

We request that the **Final** status be removed.

[004] Re: the '103 rejection of claim 1.

The '103 rejection was based on the fact that the structure disclosed by Giordano included "trays", as the PTO construed that term in relation to claim 1. The amendments make it clear that the trays of claim 1 now are tray-chambers, which are built into, and defined by, the fixed structure of the cage. This being so, the '103 rejection may now be withdrawn.

[005] Re: Claims 11-16 (Status: Withdrawn From Consideration)

As discussed in a telecon with Examiner Alimenti 20 January 2006, since claims 11-16 are dependent on claim 17, which has been examined, claims 11-16 should have been examined also.

In fact, claim 17 has been indicated as allowable, and claims 11-16 therefore should be allowable also.

[006] Re: the 35 USC 103 Rejection of Claim 2

Claim 2 depends from claim 1, which, we take it, will now be allowed, and therefore the '103 rejection of claim 2 is moot.

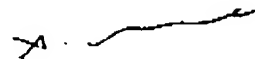
However, we note that the *Eskimo Pie vs Levous* case does not apply to claim 2.

As we understand the Olson patent, the purpose of the slope in the item 16 of Olson is to direct eggs to roll down towards the egg-receptacles (see line 32 (left) of page 2). In fact, numeral 16 in Olson does not denote a "paneled floor" as suggested by the PTO; rather, numeral 16 denotes spaced-apart parallel wires (see line 20 (left) of page 2). Given that the floor of the Olson unit is made of spaced wires, obviously, the function of the slope, in Olson, cannot have been to prevent pooling.

The lesson from *Eskimo Pie* is that there is no invention in changing form without changing function. But of course, if changing the form does change the function, the presumption of obviousness disappears.

[007] This application being now in condition for allowance, we look forward to receiving notification to that effect.

Submitted by:



Anthony Asquith

Regn 32373

Agent for the Applicant

Enclo: Amended Claims (6 pages)